

repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the responsible DoD Component.

3. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. *Rights to Inventions Made Under a Contract, Grant or Cooperative Agreement*—Contracts, grants, or cooperative agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”

5. *Clean Air Act (42 U.S.C. 7401 et seq.)* and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended—Contracts and subawards of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water

Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the responsible DoD Component and the Regional Office of the Environmental Protection Agency (EPA).

6. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance at 2 CFR 180.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System accessible on the Internet at www.epis.gov contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

[63 FR 12204, Mar. 12, 1998, as amended at 70 FR 49477, Aug. 23, 2005; 72 FR 34998, June 26, 2007]

PART 37—TECHNOLOGY INVESTMENT AGREEMENTS

Subpart A—General

Sec.

- 37.100 What does this part do?
- 37.105 Does this part cover all types of instruments that 10 U.S.C. 2371 authorizes?
- 37.110 What type of instruments are technology investment agreements (TIAs)?
- 37.115 For what purposes are TIAs used?
- 37.120 Can my organization award or administer TIAs?
- 37.125 May I award or administer TIAs if I am authorized to award or administer other assistance instruments?
- 37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?

Subpart B—Appropriate Use of Technology Investment Agreements

- 37.200 What are my responsibilities as an agreements officer for ensuring the appropriate use of TIAs?
- 37.205 What judgments must I make about the nature of the project?
- 37.210 To what types of recipients may I award a TIA?
- 37.215 What must I conclude about the recipient's commitment and cost sharing?
- 37.220 How involved should the Government program official be in the project?
- 37.225 What judgment must I make about the benefits of using a TIA?
- 37.230 May I use a TIA if a participant is to receive fee or profit?

Subpart C—Expenditure-Based and Fixed-Support Technology Investment Agreements

- 37.300 What is the difference between an expenditure-based and fixed-support TIA?
- 37.305 When may I use a fixed-support TIA?
- 37.310 When would I use an expenditure-based TIA?
- 37.315 What are the advantages of using a fixed-support TIA?

Subpart D—Competition Phase

- 37.400 Must I use competitive procedures to award TIAs?
- 37.405 What must my announcement or solicitation include?
- 37.410 Should my announcement or solicitation state that TIAs may be awarded?
- 37.415 Should I address cost sharing in the announcement or solicitation?
- 37.420 Should I tell proposers that we will not disclose information that they submit?

Subpart E—Pre-Award Business Evaluation

- 37.500 What must my pre-award business evaluation address?
- 37.505 What resources are available to assist me during the pre-award business evaluation?

RECIPIENT QUALIFICATION

- 37.510 What are my responsibilities for determining that a recipient is qualified?
- 37.515 Must I do anything additional to determine the qualification of a consortium?

Total Funding

- 37.520 What is my responsibility for determining that the total project funding is reasonable?

COST SHARING

- 37.525 What is my responsibility for determining the value and reasonableness of the recipient's cost sharing contribution?
- 37.530 What criteria do I use in deciding whether to accept a recipient's cost sharing?
- 37.535 How do I value cost sharing related to real property or equipment?
- 37.540 May I accept fully depreciated real property or equipment as cost sharing?
- 37.545 May I accept costs of prior research as cost sharing?
- 37.550 May I accept intellectual property as cost sharing?
- 37.555 How do I value a recipient's other contributions?

FIXED-SUPPORT OR EXPENDITURE-BASED APPROACH

- 37.560 Must I be able to estimate project expenditures precisely in order to justify use of a fixed-support TIA?
- 37.565 May I use a hybrid instrument that provides fixed support for only a portion of a project?

ACCOUNTING, PAYMENTS, AND RECOVERY OF FUNDS

- 37.570 What must I do if a CAS-covered participant accounts differently for its own and the Federal Government shares of project costs?
- 37.575 What are my responsibilities for determining milestone payment amounts?
- 37.580 What is recovery of funds and when should I consider including it in my TIA?

Subpart F—Award Terms Affecting Participants' Financial, Property, and Purchasing Systems

- 37.600 Which administrative matters are covered in this subpart?
- 37.605 What is the general policy on participants' financial, property, and purchasing systems?
- 37.610 Must I tell participants what requirements they are to flow down for sub-recipients' systems?

FINANCIAL MATTERS

- 37.615 What standards do I include for financial systems of for-profit firms?
- 37.620 What financial management standards do I include for nonprofit participants?
- 37.625 What cost principles or standards do I require for for-profit participants?
- 37.630 Must I require a for-profit firm to use Federally approved indirect cost rates?
- 37.635 What cost principles do I require a nonprofit participant to use?
- 37.640 Must I include a provision for audits of for-profit participants?

Pt. 37

32 CFR Ch. I (7–1–08 Edition)

- 37.645 Must I require periodic system audits, as well as award-specific audits, of for-profit participants?
- 37.650 Who must I identify as the auditor for a for-profit participant?
- 37.655 Must I specify the frequency of IPAs' periodic audits of for-profit participants?
- 37.660 What else must I specify concerning audits of for-profit participants by IPAs?
- 37.665 Must I require nonprofit participants to have periodic audits?
- 37.670 Must I require participants to flow down audit requirements to subrecipients?
- 37.675 Must I report when I enter into a TIA allowing a for-profit firm to use an IPA?
- 37.680 Must I require a participant to report when it enters into a subaward allowing a for-profit firm to use an IPA?

PROPERTY

- 37.685 May I allow for-profit firms to purchase real property and equipment with project funds?
- 37.690 How are nonprofit participants to manage real property and equipment?
- 37.695 What are the requirements for Federally owned property?
- 37.700 What are the requirements for supplies?

PURCHASING

- 37.705 What standards do I include for purchasing systems of for-profit firms?
- 37.710 What standards do I include for purchasing systems of nonprofit organizations?

Subpart G—Award Terms Related to Other Administrative Matters

- 37.800 Which administrative matters are covered in this subpart?

PAYMENTS

- 37.805 If I am awarding a TIA, what payment methods may I specify?
- 37.810 What should my TIA's provisions specify for the method and frequency of recipients' payment requests?
- 37.815 May the Government withhold payments?
- 37.820 Must I require a recipient to return interest on advance payments?

REVISION OF BUDGET AND PROGRAM PLANS

- 37.825 Must I require the recipient to obtain prior approval from the Government for changes in plans?
- 37.830 May I let a recipient charge pre-award costs to the agreement?

PROGRAM INCOME

- 37.835 What requirements do I include for program income?

INTELLECTUAL PROPERTY

- 37.840 What general approach should I take in negotiating data and patent rights?
- 37.845 What data rights should I obtain?
- 37.850 Should I require recipients to mark data?
- 37.855 How should I handle protected data?
- 37.860 What rights should I obtain for inventions?
- 37.865 Should my patent provision include march-in rights?
- 37.870 Should I require recipients to mark documents related to inventions?
- 37.875 Should my TIA include a provision concerning foreign access to technology?

FINANCIAL AND PROGRAMMATIC REPORTING

- 37.880 What requirements must I include for periodic reports on program and business status?
- 37.885 May I require updated program plans?
- 37.890 Must I require a final performance report?
- 37.895 How is the final performance report to be sent to the Defense Technical Information Center?
- 37.900 May I tell a participant that information in financial and programmatic reports will not be publicly disclosed?
- 37.905 Must I make receipt of the final performance report a condition for final payment?

RECORDS RETENTION AND ACCESS REQUIREMENTS

- 37.910 How long must I require participants to keep records related to the TIA?
- 37.915 What requirement for access to a for-profit participant's records do I include in a TIA?
- 37.920 What requirement for access to a nonprofit participant's records do I include in a TIA?

TERMINATION AND ENFORCEMENT

- 37.925 What requirements do I include for termination and enforcement?

Subpart H—Executing the Award

- 37.1000 What are my responsibilities at the time of award?

THE AWARD DOCUMENT

- 37.1005 What are my general responsibilities concerning the award document?
- 37.1010 What substantive issues should my award document address?
- 37.1015 How do I decide who must sign the TIA if the recipient is an unincorporated consortium?

REPORTING INFORMATION ABOUT THE AWARD

- 37.1020 What must I document in my award file?

Office of the Secretary of Defense

§ 37.110

- 37.1025 Must I report information to the Defense Assistance Awards Data System?
- 37.1030 What information must I report to the Defense Technical Information Center?
- 37.1035 How do I know if my TIA uses the 10 U.S.C. 2371 authority and I must report additional data under § 37.1030(b)?
- 37.1040 When and how do I report information required by § 37.1035?

DISTRIBUTING COPIES OF THE AWARD DOCUMENT

- 37.1045 To whom must I send copies of the award document?

Subpart I—Post-Award Administration

- 37.1100 What are my responsibilities generally as an administrative agreements officer for a TIA?
- 37.1105 What additional duties do I have as the administrator of a TIA with advance payments or payable milestones?
- 37.1110 What other responsibilities related to payments do I have?
- 37.1115 What are my responsibilities related to participants' single audits?
- 37.1120 When and how may I request an award-specific audit?

Subpart J—Definitions of Terms Used in this Part

- 37.1205 Advance.
- 37.1210 Advanced research.
- 37.1215 Agreements officer.
- 37.1220 Applied research.
- 37.1225 Articles of collaboration.
- 37.1230 Assistance.
- 37.1235 Award-specific audit.
- 37.1240 Basic research.
- 37.1245 Cash contributions.
- 37.1250 Commercial firm.
- 37.1255 Consortium.
- 37.1260 Cooperative agreement.
- 37.1265 Cost sharing.
- 37.1270 Data.
- 37.1275 DoD Component.
- 37.1280 Equipment.
- 37.1285 Expenditure-based award.
- 37.1290 Expenditures or outlays.
- 37.1295 Grant.
- 37.1300 In-kind contributions.
- 37.1305 Institution of higher education.
- 37.1310 Intellectual property.
- 37.1315 Nonprofit organization.
- 37.1320 Participant.
- 37.1325 Periodic audit.
- 37.1330 Procurement contract.
- 37.1335 Program income.
- 37.1340 Program official.
- 37.1345 Property.
- 37.1350 Real property.
- 37.1355 Recipient.
- 37.1360 Research.
- 37.1365 Supplies.

- 37.1370 Termination.

- 37.1375 Technology investment agreements.

APPENDIX A TO PART 37—WHAT IS THE CIVIL-MILITARY INTEGRATION POLICY THAT IS THE BASIS FOR TECHNOLOGY INVESTMENT AGREEMENTS?

APPENDIX B TO PART 37—WHAT TYPE OF INSTRUMENT IS A TIA AND WHAT STATUTORY AUTHORITIES DOES IT USE?

APPENDIX C TO PART 37—WHAT IS THE DESIRED COVERAGE FOR PERIODIC AUDITS OF FOR-PROFIT PARTICIPANTS TO BE AUDITED BY IPAS?

APPENDIX D TO PART 37—WHAT COMMON NATIONAL POLICY REQUIREMENTS MAY APPLY AND NEED TO BE INCLUDED IN TIAs?

APPENDIX E TO PART 37—WHAT PROVISIONS MAY A PARTICIPANT NEED TO INCLUDE WHEN PURCHASING GOODS OR SERVICES UNDER A TIA?

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 68 FR 47160, Aug. 7, 2003, unless otherwise noted.

Subpart A—General

§ 37.100 What does this part do?

This part establishes uniform policies and procedures for the DoD Components' award and administration of technology investment agreements (TIAs).

§ 37.105 Does this part cover all types of instruments that 10 U.S.C. 2371 authorizes?

No, this part covers only TIAs, some of which use the authority of 10 U.S.C. 2371 (see appendix B to this part). This part does not cover assistance instruments other than TIAs that use the authority of 10 U.S.C. 2371. It also does not cover acquisition agreements for prototype projects that use 10 U.S.C. 2371 authority augmented by the authority in section 845 of Public Law 103-160, as amended.

§ 37.110 What type of instruments are technology investment agreements (TIAs)?

TIAs are assistance instruments used to stimulate or support research. As discussed in appendix B to this part, a TIA may be either a kind of cooperative agreement or a type of assistance transaction other than a grant or cooperative agreement.